

The Requirement for Restriction

The Examiner has divided the claims into 8 groups and requires an election of one of them:

- I. Claims 1-21, 23-25, 29-30, 33-35, 26, 27, insect gene expression system comprising at least one gene to be expressed and at least one promoter, wherein the gene product is a positive transcriptional control factor for the promoter, and whereby the product or the expression of the product is controllable.
- II. Claim 22, insect gene expression system wherein the effector gene encodes RNAi.
- III. Claim 28, insect gene expression system wherein expression of the positive control gene on removal of a suppressor has substantially no effect on fitness of an adult from which the suppressor is removed.
- IV. Claim 31, insect gene expression system, where the vector is pLA513 (SEQ ID NO:16).
- V. Claim 32, insect gene expression system, where the vector is JY2004-tTA (SEQ ID NO:14).
- VI. Claim 36, insect gene expression system, further comprising an expressible transposase gene.
- VII. Claims 37-41, insect comprising the insect gene expression system, where the product or its expression is controllable.
- VIII. Claim 42, method to establish compatibility of promoter with a species comprising transforming the insect comprising within its genome the insect gene expression system.

In addition, the Examiner has required an election of (promoter) species from the following: hsp70, a P minimal promoter, a CMV minimal promoter, an Act5C-based minimal promoter, a BmA3 promoter fragment, an Adh core promoter and an Act5C minimal promoter. One of these species must be elected for examination; the non-elected species should be rejoined if a generic claim is found to be allowable.

Applicants elect the claims of Group I for examination with traverse. Within Group I, Applicants elect the species which is the hsp70 promoter. Claims 1-21, 23-27, 29-30 and 33-35 read on the elected hsp70 promoter species.

The Examiner has noted that the application contains claim 26 generic to one or more than one cistrons, generic to all claims, and claim 27 which encompasses two or more than two citrons.

The Examiner has clarified by telephone in a conference with the undersigned on December 1, 2008, that she meant there was a need to elect one or more than one cistron in claim 26 and two or more than two cistrons in claim 27. Applicants respectfully elect the species of "one cistron" for examination, claim 26. Claims (1-21, 23-6, 29-30 and 33-35) read on the elected species. With respect to claim 27, which recites two or more, Applicants note that this is encompassed by the "at least one" language of claim 26.

The Examiner has commented on a potential rejection over Horne et al. Applicant respectfully disagrees that the claimed invention is obvious over this reference, at least in part because Horn does not teach the positive control and reserves the right to traverse when and if a formal rejection is made. Traverse of the requirement for restriction is made, at least in part, on the grounds that the claims are united by the features of the claims of Group I (especially claim 1) and the Examiner is mistaken in the interpretation of the Horn reference. Applicant does not admit that any claims group is an obvious variant of any other claims group, however.

In view of the foregoing, Applicant respectfully requests the withdrawal of the requirement for restriction and simultaneous examination of all claims.

### **Conclusion**

In view of the foregoing, it is submitted that this case is in condition for allowance, and passage to issuance is respectfully requested.

371Application of Alphey  
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Response dated December 1, 2008

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If there are any outstanding issues related to patentability or with respect to this response, the courtesy of a telephone interview is requested, and the Examiner is invited to call to arrange a mutually convenient time.

This response is accompanied by a Petition for Extension of Time (two months) and payment of \$245.00 as required by 37 C.F.R. 1.17. It is believed that this amendment does not necessitate the payment of any additional fees under 37 C.F.R. 1.16-1.17. If the amount submitted or the extension requested is incorrect, however, please charge any deficiency or credit any overpayment to Deposit Account No. 07-1969 and grant the necessary extension of time to insure the present response is timely filed.

Respectfully submitted,

/donnamferber/

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